

Sixty-second
Legislative Assembly
of North Dakota

SENATE BILL NO. 2098

Introduced by

Industry, Business and Labor Committee

(At the request of the State Board of Cosmetology)

1 A BILL for an Act to create and enact a new subsection to section 43-11-02 of the North Dakota
2 Century Code, relating to exemption from cosmetology licensure; to amend and reenact
3 sections 43-11-01, 43-11-05, and 43-11-06, subsection 7 of section 43-11-16, and sections
4 43-11-17, 43-11-19, 43-11-21, 43-11-24, 43-11-25, 43-11-26, 43-11-27, and 43-11-31 of the
5 North Dakota Century Code, relating to the practice and licensing of cosmetologists,
6 cosmetology salons, estheticians, instructors, manicurists, and schools and the powers and
7 compensation of the state board of cosmetology; to repeal section 43-11-28 of the North Dakota
8 Century Code, relating to fees; and to provide an effective date.

9 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

10 **SECTION 1. AMENDMENT.** Section 43-11-01 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **43-11-01. Definitions.**

13 In this chapter, unless the context or subject matter otherwise requires:

- 14 1. "Board" means the state board of cosmetology.
- 15 2. "Cosmetologist" means an individual licensed under this chapter to practice
16 cosmetology.
- 17 3. "Cosmetology" means any one or combination of practices generally and usually
18 performed by and known as the occupation of beauty culturists or cosmeticians or
19 cosmetologists or hairdressers, or of any other person holding out as practicing
20 cosmetology by whatever designation and within the meaning of this chapter and in
21 and upon whatever place or premises; and in particular cosmetology includes the
22 following or any one or a combination of practices: arranging, dressing, curling,
23 waving, cleansing, cutting, singeing, bleaching, coloring, or similar work, upon the hair
24 of any person by any means or with hands or mechanical or electrical apparatus or

1 appliances, or by the use of cosmetic preparations, antiseptics, tonics, lotions, creams,
2 or otherwise, massaging, cleansing, stimulating, manipulating, exercising, waxing to
3 remove hair, beautifying, or similar work on the body, or manicuring the nails of any
4 person.

5 ~~3.4.~~ "Cosmetology salon" includes that part of any building in which the occupation of a
6 cosmetologist is practiced.

7 ~~4.5.~~ "Esthetician" means a person who is licensed by the board to engage in the practice of
8 skin care. An esthetician does not include a professional make-up artist trained in
9 facial make-up application by a cosmetics company.

10 ~~5.6.~~ "Homebound" means any person who is ill, disabled, or otherwise unable to travel to a
11 salon.

12 ~~6.7.~~ "Instructor" means any person of the age of eighteen years or more, who is a licensed
13 cosmetologist, who teaches cosmetology or any practices taught in a duly registered
14 school of cosmetology, and who has met the requirements of section 43-11-27 and
15 has applied for and received an instructor's license.

16 ~~7.8.~~ "Invasive care" means any procedure that invades the live tissue of the dermis,
17 including:

18 a. Laser use, except the use of cold laser technology using nonlinear, pulsed light
19 application for the purpose of biostimulation without the generation of heat; and

20 b. Chemical peels, except for chemical peels using:

21 (1) Thirty percent alpha hydroxy acid, which includes glycolic acid with a pH of
22 3.0 or higher;

23 (2) Twenty percent beta hydroxy acid, which includes salicylic acid with a pH of
24 3.0 or higher; or

25 (3) Two percent resorcinol with a pH of 3.0 or higher.

26 ~~8.9.~~ "Manager-operator" means any person who has met the requirements of section
27 43-11-26 and has applied for and received a managing cosmetologist license.

28 ~~9.10.~~ "Manicuring" means the cleansing, cutting, shaping, beautifying, or massaging of the
29 hands, feet, or nails of any person.

30 ~~10.11.~~ "Manicurist" means a person who is licensed by the board to engage in the practice of
31 manicuring.

- 1 11. ~~"Operator" means a person, not a student, who is licensed under the provisions of this~~
2 ~~chapter to engage in and follow any of the practices of a hairdresser or cosmetologist.~~
3 12. "School of cosmetology" means an establishment operated for the purpose of teaching
4 cosmetology.
5 13. "Skin care" means the use of cosmetic preparations, antiseptics, tonics, lotions,
6 creams, or otherwise, massaging, cleansing, stimulating, manipulating, waxing to
7 remove hair, beautifying, or similar work on the body of any person. The term does not
8 include invasive care.
9 14. "Student" means any person who is engaged in the learning or acquiring of any or all
10 the practices of cosmetology and while so learning, performs or assists in any of the
11 practices of cosmetology in any school registered or licensed and under the immediate
12 supervision of an instructor licensed as such under this chapter.
13 15. "Student instructor" means a cosmetologist who is receiving instruction in teacher's
14 training in a duly registered school of cosmetology.
15 16. "Tuition" means the total cost of a person's cosmetology studies, and does not include
16 books or demonstration kits.

17 **SECTION 2.** A new subsection to section 43-11-02 of the North Dakota Century Code is
18 created and enacted as follows:

19 Skin care provided under the supervision, control, and responsibility of a physician in
20 the hospital, clinic, or physician's office.

21 **SECTION 3. AMENDMENT.** Section 43-11-05 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **43-11-05. Officers of board - Powers - Rulemaking.**

24 The members of the board annually shall elect a president and a secretary from the
25 members of the board. The president and the secretary may administer oaths. The board may
26 adopt rules necessary to implement this chapter, including rules establishing license,
27 application, examination, reexamination, renewal, late renewal, and administrative fees in
28 amounts necessary to compensate the board for administration and enforcement of this
29 chapter.

30 **SECTION 4. AMENDMENT.** Section 43-11-06 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **43-11-06. Compensation of members of board - How paid.**

2 Each member of the board is entitled to receive compensation of one hundred dollars for
3 each day employed in the actual discharge of official duties, as determined by the board. The
4 ~~secretary of the board shall receive an annual salary of not more than thirteen thousand dollars~~
5 ~~to be fixed by the board, and necessary expenses actually incurred in the performance of official~~
6 ~~duties.~~ Expenses incurred by a board member in the performance of an official function are
7 payable by the board pursuant to sections 44-08-04 and 54-06-09. The compensation and
8 expenses of all members of the board must be paid from the license fees and other sources of
9 income of the board.

10 **SECTION 5. AMENDMENT.** Subsection 7 of section 43-11-16 of the North Dakota Century
11 Code is amended and reenacted as follows:

12 7. Agrees not to:

13 a. ~~Conduct a clinical department for fees after licensure by the board, until the~~
14 ~~school has been operating for a period of at least twenty percent of the total~~
15 ~~hours of instruction required by this chapter;~~

16 b. Permit any student to practice on any person not an instructor or registered
17 student of the school until the student has completed at least twenty percent of
18 the total hours of instruction required by this chapter; or

19 c.b. Compensate any of its basic students in any way; and

20 **SECTION 6. AMENDMENT.** Section 43-11-17 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **43-11-17. Licenses issued for schools of cosmetology and cosmetology salons - Fee**
23 **for annual registration.**

24 The board may issue an annual license for a school of cosmetology. The annual registration
25 fee for a school must be determined by the board, ~~as set forth in section 43-11-28~~ by rule. The
26 board shall, after inspection and approval, issue a salon license, the annual fee for which must
27 be determined by the board, ~~as set forth in section 43-11-28~~ by rule.

28 **SECTION 7. AMENDMENT.** Section 43-11-19 of the North Dakota Century Code is
29 amended and reenacted as follows:

30 **43-11-19. Students - Registration.**

31 A student cosmetologist must:

- 1 1. Adhere to the laws and rules regarding the practice of cosmetology;
- 2 2. Have educational qualifications equivalent to completion of four years of high school;
- 3 and
- 4 3. Have enrolled in a school of cosmetology and complied with the preliminary
- 5 requirements thereof.

6 The names and qualifications of all students must be certified to the board by each school of
7 cosmetology. The certification must be accompanied by a processing fee for each student in an
8 amount as may be fixed by the board ~~under section 43-11-28~~by rule.

9 **SECTION 8. AMENDMENT.** Section 43-11-21 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **43-11-21. ~~Operator's~~Cosmetologist license - Examination required - Application -**
12 **Examination - Fees.**

13 Each person who desires to secure an ~~operator's~~a cosmetologist license shall file with the
14 secretary of the board a written application under oath on a form supplied by the board. The
15 application must be accompanied by all of the following:

- 16 1. Satisfactory proof of the educational qualifications required of a student; and
- 17 2. An examination fee as may be fixed by the board ~~pursuant to section 43-11-28~~by rule.
- 18 3. Satisfactory proof that the applicant has completed the required training in a school of
- 19 cosmetology; and
- 20 4. A fee for original licensure as required by ~~section 43-11-28~~rule.

21 **SECTION 9. AMENDMENT.** Section 43-11-24 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **43-11-24. ~~Operator's~~Cosmetologist license - When issued - Failure to pass**
24 **examination - Reexamination - Retraining.**

25 An ~~operator's~~A cosmetologist license must be issued to any person who has met all the
26 following requirements:

- 27 1. Complied with section 43-11-21; and
- 28 2. Passed to the satisfaction of the board the examination of applicants for a license to
- 29 practice under this chapter.

30 If the applicant fails to pass the examination, the examination fee may not be returned. If an
31 applicant fails to pass an examination, the applicant may be examined again with the payment

of a reexamination fee ~~as set forth in section 43-11-28~~. An applicant who fails to pass the first-
~~reexamination~~practical examination twice must complete an additional one hundred sixty hours
of training at a school of cosmetology before applying for a second reexamination.

SECTION 10. AMENDMENT. Section 43-11-25 of the North Dakota Century Code is
amended and reenacted as follows:

43-11-25. License issued without examination - Conditions.

The board may dispense with the examination of applicants for licenses to practice
cosmetology and may grant licenses upon the payment of a fee for original licensure and the
reciprocity fee ~~provided in section 43-11-28~~ if all the following requirements are met:

1. The applicant has complied with the requirements for registration of the District of
Columbia, or another state, territory, foreign country, or province where the
requirements are equal substantially to those in force in this state at the time the
application for the license is filed; ~~and~~
2. The applicant passes to the satisfaction of the board an examination on sanitary
practices and cosmetology law in this state.

SECTION 11. AMENDMENT. Section 43-11-26 of the North Dakota Century Code is
amended and reenacted as follows:

43-11-26. Manager-operator - License - Qualifications.

~~A person~~An individual may obtain a manager-operator's license upon meeting all the
following requirements:

1. Furnishing to the board evidence of having practiced as a ~~licensed-~~
~~operator~~cosmetologist for at least ~~one hundred twenty-five days~~one thousand hours.
2. Paying an original licensure fee ~~as set forth in section 43-11-28~~; ~~and~~
3. Complying with the other requirements of this chapter applicable to a
manager-operator.

SECTION 12. AMENDMENT. Section 43-11-27 of the North Dakota Century Code is
amended and reenacted as follows:

**43-11-27. Instructor's license - Student instructor's license - Registration -
Qualifications.**

1. No person may be licensed as an instructor of cosmetology unless the person
furnishes the board the examination fee ~~set forth in section 43-11-28~~ and evidence of

having a general education equivalent to the completion of four years in high school.

An applicant:

a. Shall have at least nine hundred sixty hours instructor's training in cosmetology in a school of cosmetology. In no event may more than two thousand sixty hours instructor's training be required for admission to examination. Under this subdivision the practical portion of the examination may be waived if the written examination is supplemented with videotapes of the applicant's teaching procedures;

b. Shall possess a current North Dakota license as a cosmetologist and must have been actively engaged in the practice of cosmetology for at least one year before application for an instructor's license, supplemented by not less than four hundred eighty hours instructor's training in a school of cosmetology or course of training approved by the board; or

c. Shall possess a current North Dakota license as a cosmetologist and shall have been actively engaged in the practice of cosmetology for at least three years prior to application for an instructor's license supplemented by not less than one hundred sixty hours instructor's training in a school of cosmetology or course of training approved by the board. No instructor or student instructor may be permitted to practice cosmetology on a patron other than that part of practical work which pertains directly to the teaching of practical operations to students.

2. Student instructors in cosmetology must be registered upon enrollment in a school of cosmetology and upon certification by the school to the board of the name, age, and qualifications of the student instructor which must be recorded in a register kept for that purpose. A student instructor shall, at the time of enrollment, possess a general education equivalent to the completion of four years in high school and hold a license as a cosmetologist. Upon completion of the course prescribed for student instructors, the student instructor shall make application on a form provided by the board and pay a fee ~~as provided in section 43-11-28~~. The board shall thereupon cause the applicant to be examined for an instructor's license. The examination must be given by a special examining committee comprised of the board, assisted by one person designated by the board possessing the minimum qualifications entitling the person to instruct in an

institution of higher learning and who shall examine the applicant in teaching procedures only. Upon successfully passing the examination the board shall issue an instructor's license to the applicant.

3. No person is entitled to renew an instructor's license unless the instructor has furnished to the board evidence of completion of the continuing education established by the board by rule.

SECTION 13. AMENDMENT. Section 43-11-31 of the North Dakota Century Code is amended and reenacted as follows:

43-11-31. License - Refusal to grant - Grounds.

The board may refuse to grant a license which may be issued under this chapter to any person who deny an application or discipline a licensee on any of the following grounds:

1. ~~Is guilty of fraud~~Fraud in passing the examination;.
2. ~~Is guilty~~Conviction of an offense determined by the board to have a direct bearing upon a person's ability to serve the public as ~~a cosmetologist~~in a profession licensed by the board, or ~~who~~, following conviction of any offense, the board determines the person is not sufficiently rehabilitated under section 12.1-33-02.1;.
3. ~~Is guilty of grossly~~Grossly unprofessional or dishonest conduct;.
4. ~~Is addicted~~Addiction to the use of intoxicating liquor or drugs to such an extent as to render the person unfit to practice cosmetology;.
5. ~~Advertises~~Advertising by means of knowingly false or deceptive statements;
6. ~~Fails~~Failure to display the license as provided in this chapter; ~~or~~.
7. ~~Violates~~Violation of the provisions of this chapter or the rules adopted by the board.
8. Permitting an unlicensed person to practice cosmetology, manicuring, skin care, or teaching in a cosmetology salon or school of cosmetology.

SECTION 14. REPEAL. Section 43-11-28 of the North Dakota Century Code is repealed.

SECTION 15. EFFECTIVE DATE. Section 14 of this Act becomes effective on January 1, 2012.